

Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
August 19, 2021

ITEM: 3

SUBJECT: Public Hearing on ***Stipulated Cease and Desist Order*** No. R1-2021-0027 for Dean Soiland doing business as BoDean Co., Inc. for BoDean Hot Plant Facility (Facility), 1060 Maxwell Drive, Santa Rosa (Farzad Kasmaei).

BOARD ACTION: The Board will consider adoption of Stipulated Cease and Desist Order No. R1-2021-0027 (Proposed Order).

BACKGROUND: The Santa Rosa Hot Plant Facility (Facility) is located at 1060 Maxwell Drive in Santa Rosa. The Facility is a 6-acre asphalt batch and material plant and is an industrial facility regulated by Order No. 2014-0057 DWQ, NPDES Order No. CAS00001, General Permit for Storm Water Discharges Associated with Industrial Activities (Industrial General Permit or Permit). The Facility is owned and operated by Dean Soiland doing business as BoDean Co., Inc. (Discharger). The Discharger enrolled the Facility in the Industrial General Permit by submitting a Notice of intent on June 19, 2015.

Stormwater runoff from the Facility drains through existing private on-site drop inlets throughout the Facility which connects to the public storm drain system at Manhole (MH) 12562 on Maxwell Drive. This runoff is conveyed through the public storm drain system and discharges to College Creek, which is a tributary of the Russian River, a water of the United States. The Clean Water Act section 303(d) list identifies the Russian River as impaired for both sediment and temperature, as well as, pathogens, mercury, phosphorus, and dissolved oxygen.

The Industrial General Permit requires permittees to utilize and maintain Best Management Practices (BMPs) "to reduce or prevent pollutants in industrial storm water discharges." Historically, the Facility has exceeded the Industrial General Permit's Numeric Action Level (NAL) for Total Suspended Solids (TSS) resulting in the Facility being placed in Level 2 status¹.

¹ Industrial General Permit Sections XII.C. and XII. D provide that a discharger shall be placed in Level 1 status if sampling results indicate a Numeric Action Level (NAL) exceedance; dischargers move into Level 2 status if sampling results indicate an NAL exceedance for the same parameter.

On December 4, 2019, Regional Water Board Staff received a complaint regarding sediment being tracked out of the Facility. Subsequent inspections at the Facility identified ongoing violations of the Industrial General Permit resulting in the discharge of sediment laden stormwater to the Russian River. The Proposed Order requires the Discharger to correct these conditions of noncompliance and to comply with the Industrial General Permit.

DISCUSSION: Regional Water Board staff inspected the Facility on December 5, 2019. During this inspection, Regional Water Board staff observed multiple stockpiles of aggregate and asphalt material stored outside. In response, Regional Water Board staff issued a Notice of Violation (NOV) on June 15, 2020 identifying the following deficiencies:

- Inadequate and ineffective BMPs;
- Failure to maintain BMPs; and,
- Unauthorized discharge of highly turbid storm water.

Regional Water Board staff conducted a follow up inspection on August 12, 2020 and observed evidence that the Discharger had performed BMP maintenance in response to the NOV. However, stockpiles were not protected from contact with stormwater, and additional sediment/erosion control BMPs would be needed prior to a rain event in order to prevent the discharge of pollutants. Discharger representatives stated that they understood that they must install and/or implement additional BMPs prior to the next Qualifying Storm Event (QSE)².

Staff returned to the Facility on March 18, 2021 during a Qualifying Storm Event and observed that all stockpiles were uncovered with the exception of two asphalt stockpiles. Staff also observed highly turbid runoff leaving the Facility. Staff collected discharge samples from the Facility's storm water sampling point.

Analytical results from the March 18, 2021 sampling event recorded high concentrations of TSS, aluminum, iron, and magnesium in the Facility's runoff. Subsequently, staff issued a second NOV on May 18, 2021, identifying the following violations of the Industrial General Permit:

- Inadequate and ineffective BMPs;
- Unauthorized discharge of highly turbid and pollutant-laden stormwater;
- Failure to identify the Facility-specific parameters including Magnesium, Aluminum and Iron in the Stormwater Pollution Prevention Plan (SWPPP);

² The Industrial General Permit (Attachment C) defines a Qualifying Storm Event, as follows: "A precipitation event that: (a) produces a discharge for at least one drainage area; and (b) is preceded by 48 hours with no discharge from any drainage area."

- Violation of Discharge Prohibitions;
- Violation of effluent limitation requirements;
- Violation of receiving water limitation requirements; and,
- Failure to collect a minimum of 4 samples during 2019-20 reporting year.

Due to the Facility's non-compliance with the Industrial General Permit and the ongoing threat to water quality posed by pollutant sources at the Facility and waste discharges from the Facility, Regional Water Board Prosecution Team staff prepared a Draft Order which was posted for public comment on June 18, 2021. This matter involves a separation of functions between Advisory Team staff and Prosecution Team staff due to the potential for a contested evidentiary hearing. There have been no ex parte communications between the Advisory Team and Prosecution Team related to the substance of the Proposed Order.

The Advisory Team circulated draft hearing procedures that would apply to the proceedings related to the Regional Water Board's consideration of the Proposed Order. The Discharger and Prosecution Team requested minor modifications to the deadlines for comment submission and hearing time limits. The Advisory Team granted the requests and finalized the hearing procedures. The public comment period for submission of written comments on the draft Cease and Desist Order closed on July 30, 2021. No comments were received.

During the public comment period, the Advisory Team was notified that the Discharger and the Regional Water Board Prosecution Team (together, Parties) engaged in confidential settlement negotiations and have agreed to stipulate to the Proposed Cease and Desist Order No. R1-2021-0027. The Proposed Order reflects the Discharger's intent to install a water treatment system in order to correct the alleged violations identified in the Draft Order. Paragraph 5 – Alternative Sampling and Monitoring has been added to the Proposed Order to require monitoring and sampling specific to a water treatment system. Other minor language changes have been made but do not significantly impact the material terms of the Draft Order.

The Proposed Order directs the Discharger to take further compliance actions and submit enhanced reports, as summarized below:

- Cover all industrial materials that can be readily mobilized by contact with storm water runoff as required by the Industrial General Permit;
- Conduct and develop a BMP Evaluation and Installation Report;
- Prepare, implement, and upload to SMARTS an updated SWPPP;
- Conduct and submit enhanced Sampling and Monitoring Reports;
- Prepare and submit enhanced Annual Reports.

Compliance with the Proposed Order will ensure that the Discharger complies with the Industrial General Permit.

RECOMMENDATIONS: Adopt ***Stipulated Cease and Desist Order No. R1-2021-0027***, as proposed.

SUPPORTING DOCUMENTS:

1. Stipulated Proposed Order No. R1-2021-0027 (strikeout and underline version)
2. Stipulation for Entry of Cease and Desist Order R1-2021-0027
3. Public Notice and Final Hearing Procedures